

FILED

OCT 17 2007

 CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

RACHEL BADGER FOX, individually
and as Special Administrator of the
ESTATE OF GERALD E. FOX,

Civ. No. 07-5076

Plaintiffs,

Notice of Removal

vs.

**LIFE INSURANCE COMPANY OF
NORTH AMERICA, A.G.I.A., INC.**, and
**LEGIONNAIRE INSURANCE TRUST
PROGRAM**,

Defendants.

Defendants Life Insurance Company of North America ("LINA"),
A.G.I.A., Inc. ("A.G.I.A."), and Legionnaire Insurance Trust Program ("the
Trust") submit this Notice of Removal for the purpose of removing the
above-entitled action from the Circuit Court of the Fourth Judicial
Circuit in Lawrence County, South Dakota to the United States District
Court for the District of South Dakota based on diversity jurisdiction,
and state as follows in support of this removal:

1. LINA first received notice of this action when the South Dakota
Division of Insurance was served with a copy of the Summons and
Complaint on September 27, 2007. See copy of letter of the South
Dakota Division of Insurance dated September 27, 2007 attached to this
notice as Exhibit A.

2. 28 U.S.C. § 1332(a)(1) provides that this Court “shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,” and the action “is between [c]itizens of different States.”

3. There is complete diversity of citizenship between the parties to this action on the following grounds:

- a. Plaintiff Rachel Badger Fox (“Fox”) is a resident of Lead, South Dakota. See Complaint, ¶ 3, which LINA, A.G.I.A., and the Trust have attached to this notice as Exhibit B.
- b. LINA is an insurance company organized and existing under the laws of the Commonwealth of Pennsylvania. See Complaint, ¶ 4.
- c. A.G.I.A. is an insurance company domiciled in California. Complaint, ¶ 6.
- d. The Trust is based in Phoenix, Arizona. Complaint, ¶ 16.

4. Fox seeks the recovery in this action of an insurance benefit in the amount of \$100,000.00, and, therefore, the amount in controversy exceeds \$75,000. Complaint, ¶¶ 23, 36, and Prayer for Relief paragraph; *see also* Complaint, Exhibits 2-4.

5. The United States District Court for the District of South Dakota, therefore, has original jurisdiction over this case pursuant to 28

U.S.C. §1332, because it is a civil action between citizens of different states and the amount in controversy is in excess of \$75,000.

6. LINA, A.G.I.A., and the Trust may properly remove this case to this Court under 28 U.S.C. § 1441.

7. LINA, A.G.I.A., and the Trust have filed this Notice of Removal within 30 days of receipt of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, and, therefore, this Notice of Removal is timely. 28 U.S.C. § 1446(b).

8. The state court in which this action was commenced is within this Court's district and division. Therefore, this action is properly removable to this Court under 28 U.S.C. §§ 1446(a). LINA, A.G.I.A., and the Trust have attached a copy of the State Court Notice as Exhibit C.

9. In accordance with 28 U.S.C. § 1446(d), LINA, A.G.I.A., and the Trust have served a copy of this Notice of Removal on the attorney for Fox and filed it with the Clerk of Circuit Court of the Fourth Judicial Circuit in Lawrence County, South Dakota.

THEREFORE, Defendants Life Insurance Company of North America, A.G.I.A., Inc., and Legionnaire Insurance Trust Program give notice pursuant to 28 U.S.C. § 1446 of the removal of this action from the Circuit Court of the Fourth Judicial Circuit in Lawrence County, South Dakota District, and request that this Court enter such further orders as may be necessary and proper.

Respectfully submitted October 17, 2007.

**BANGS, McCULLEN, BUTLER, FOYE
& SIMMONS, L.L.P.**

By: 

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned certifies that on October 17, 2007, he caused true and correct copies of the above to be served upon each of the persons identified below as follows:

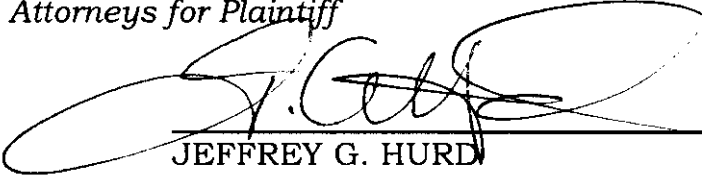
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<input type="checkbox"/>	Electronic Mail	<input type="checkbox"/>	ECF System

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